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VIA ELECTRONIC MAIL

Hon. Sarah L. Cave
United States Magistrate Judge
Southern District of New York
500 Pearl Street, Room 1670
New York, NY 10007

Re: *Flynn et al v. Cable News Network*, No. 1:21-cv-02587 (S.D.N.Y.) – Response
and Clarification Letter in further support of CNN’s Request for a Discovery
Conference

Dear Judge Cave:

We represent Defendant Cable News Network (“CNN”) in the above-referenced action and submit this response letter to clarify a few points raised by Plaintiffs’ counsel in his letter dated October 1, 2022. Plaintiffs’ counsel consented to CNN filing this letter today.

Failure to Comply with Federal Rule of Civil Procedure 26(g)(1)(A): In an email to Plaintiffs’ counsel dated September 7, 2022, CNN’s counsel expressly asked Plaintiffs’ counsel to “confirm that [he] also searched [his] clients’ document repositories and did not merely review the documents they provided to him.”¹ Instead of confirming that this was accurate, Plaintiffs’ counsel responded that his “clients each independently searched their records for all responsive documents” and that he was not obligated “to sit beside a client while they search their offices or computers for records.” But, as CNN’s counsel has explained at length, reliance on his clients’ representations that they have complied, does not satisfy counsel’s independent obligation to actively search all sources of responsive documents and communications and produce them.

Failure to Produce Authentic Documents: While Plaintiffs’ counsel continues to focus only on Jack Flynn’s handwriting, CNN’s counsel has explained the breadth of this issue in numerous meets and confers and in its opening letter-motion to the Court. To date, aside from some Wayback Machine captures, Plaintiffs’ counsel refuses to re-produce all documents with cut-off text, blurry screenshots and photos, missing embedded images, and highlights from his clients’

¹ If the Court would like to review this email between counsel, CNN can provide it for *in camera* review.

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emails, text messages, and other document repositories. His failure to do so renders these documents inauthentic and unusable in depositions.

Failure to Provide Notarized Parler Consents: Plaintiffs' counsel similarly ignores that CNN has requested data from Parler regarding any posts a user has ever liked, even if that user never posted herself or himself, and any posts a user may have deleted. For the avoidance of doubt, it is irrelevant that Flynn's counsel claims that Leslie and Joe Flynn created Parler accounts that they either did not use or used sparingly. Similarly, it does not matter that Lori Flynn allegedly never created a Parler account. CNN is entitled to receive third-party discovery from Parler related to these additional data points and requires notarized consents to do so.

For the reasons stated in CNN's opening letter-motion for discovery conference and in this subsequent clarification, CNN seeks an order compelling Plaintiffs' counsel to complete an independent review of his clients' documents pursuant to Federal Rule of Civil Procedure 26(g)(1)(A), to re-produce authentic documents, and to provide the required notarized consents for his clients' social media accounts on Parler to be subpoenaed.

Respectfully Submitted,

Davis Wright Tremaine LLP



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